

COMSCINST 5890.1D	COG CODE N2	DATE 12 NOV 1981
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DEPARTMENT OF THE NAVY  
 COMMANDER MILITARY SEALIFT COMMAND  
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COMSCINST 5890.1D  
 M-7  
 12 November 1981

## COMSC INSTRUCTION 5890.1D

Subj: General Average and Salvage

Ref: (a) COMSC Instruction 5890.2  
 (b) COMSC Instruction 5212.3  
 (c) SECNAV Instruction 5212.5

1. Purpose. This instruction establishes procedures and defines responsibilities for the investigation of certain marine casualties and for the processing of general average claims.

2. Cancellation. COMSC Instruction 5890.1C.

3. Background

a. A general average act as defined in maritime law is any extraordinary sacrifice or expenditure intentionally and reasonably made or incurred for the common safety in order to preserve the common maritime venture. The several interests engaged in the maritime venture are required to make good the loss by contributing to the extraordinary sacrifices or expenditures in proportion to the share of each in the adventure. The obligation to contribute is now invariably imposed by a contractual provision which is incorporated in all commercial contracts for the water carriage of goods; however, such an obligation could arise under admiralty law as a matter of pure equity entirely independent of contract. Before there can be a valid claim for general average contribution, it is necessary that the ship and cargo should have been placed in a common, imminent peril; that there should have been a voluntary expenditure or sacrifice of property to avert the peril and to accomplish the safe prosecution of the voyage; and that by that sacrifice or expenditure the safety of the contributing property should have been successfully attained.

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b. Contribution, if all the necessary conditions prevail, is based upon the principle that whatever is sacrificed or expended for the common safety should be made good by all the interests which were exposed to the common peril and which were saved from that common danger by the sacrifice. The contributing interests are primarily the vessel, the cargo, and the freight, the latter meaning the sum the ship earns in carrying cargo to its destination as a result of the successful sacrifice.

c. General average may be declared as the result of practically any type of marine casualty or misadventure, such as: fire, jettison of cargo, voluntary strandings; damage to hull, machinery, and boilers; heavy weather; salvage; foundering; collision; and other extraordinary circumstances requiring detention in, or deviation to, a port of refuge.

d. Salvage has been variously defined as the service of saving property from a peril of the sea by those under no legal obligation to do so and as the compensation allowed to persons by whose assistance a ship or her cargo has been saved in whole or in part from impending peril on the sea, or in recovering such property from actual loss, as in the case of shipwreck, derelict, or recapture. The term is frequently used to include the service when performed under a contract between the property owners or the ship's master and the salvor. The most common salvage contract used by professional salvors and commercial towing companies is Lloyd's Standard Form of Salvage Agreement No Cure-No Pay (Lloyd's Open Form) which provides for settlement of the compensation payable to the salvors through an arbitration process in London, England. As in the case of general average, the contributory interests are the vessel, the cargo and the freight.

#### 4. Scope

a. It is emphasized that general average is not an element of, and this instruction does not deal with, the shipment of Government cargo in MSC commissioned and in-service ships and on General Agency Agreement ships. It is restricted to the carriage of goods in commercial vessels. Salvage can involve such ships and their cargo. However, reports concerning such salvage are covered in other instructions.

b. All MSC contracts for the carriage of Government cargo by commercial vessels provide for contribution in general average and salvage in the same manner as they stipulate payment of freight and reimbursement of expenses. The relevant standard clauses expressly included in voyage charters, time charters and shipping and container contracts and agreements, and incorporated by reference in Government bills of lading, are:

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#### “AMENDED JASON CLAUSE

In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract, or otherwise, the cargo, shippers, consignees, or owners of the cargo shall contribute with the Owner in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo. If a salving Vessel is owned or operated by the Owner, salvage shall be paid for as fully as if such salving vessel or vessels belonged to strangers.”

#### “GENERAL AVERAGE CLAUSE

General Average shall be adjusted, stated and settled, according to York-Antwerp Rules 1974, 1/ at such port or place in the United States as may be selected by the Owner, and as to matters not provided for by those Rules, according to the laws and usages at the port of New York.  
\*\*\*”

1/ Some longstanding charter parties may refer to the 1950 Rules.

c. Authority to settle with administrative finality has been granted to MSC for all general average and salvage claims arising under all contracts for commercial carriage of Government cargo. This final settlement authority is subject to the right of appeal under the Contract Disputes Act, 1978, 41 USC 601-613. In the case of claims arising out of Government bill of lading shipments the finality of MSC settlement is subject to the claimant’s right to file a claim with the General Accounting Office or to have recourse to appropriate judicial remedy. The settlement authority is subject to the prevailing general restriction forbidding settlement by an administrative agency where legal authority is uncertain or inconclusive. Even though in a given situation settlement authority may be doubtful or it may not be certain that a general average or salvage claim will arise, COMSC, in every situation of marine casualty involving Government cargo carried under MSC cognizance, has the duty of investigating and of ascertainment of the relevant facts.

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## 5. Responsibility

a. At the time of a marine casualty involving a vessel carrying Government cargo, it may not be known whether general average will be declared or whether such declaration would be proper; likewise, it will not be known what other potential claims by, or against, the Government may exist. Therefore, in all cases of marine casualty involving a commercial vessel carrying Government cargo under MSC charter, contract or agreement, or carrying a substantial amount of Government cargo under a bill of lading for which MSC has payment responsibility, a local investigation in the area of occurrence should be made by the cognizant command to cover the contingency of general average, as well as the possibility of claim for reduction of hire or freight; for reimbursement for fuel consumed and for other expenses; for damaged and lost cargo; for damage to the vessel or against the damaging instrumentality; and to protect generally the Government's interests as they may appear. The degree of investigation should be commensurate with COMSC's interest in potential claims arising from the casualty, e.g., a small shipment under a bill of lading would probably not require any local investigation. The investigation should develop the following information, as well as such other information as may be relevant in the particular situation:

(1) Factual background and circumstances surrounding the incident.

(2) If an incident has occurred while the vessel is partially loaded or discharged, an identifying description of Government cargo actually aboard at the time of the incident. It is not necessary to furnish the value of this cargo unless the value is essential to the description. Care must be taken to exclude cargo not yet loaded or already discharged at the time of the incident.

(3) If the incident has resulted in damage or loss to cargo, a description of the damage. This is intended to apply only to a substantial marine casualty or disaster and is not intended to apply to the handling of routine cargo claims or stevedore damage claims. This report should not include values of the damaged cargo unless such values are necessary to describe the damage, such as in the case of damaged vehicles where the damages can only be described in terms of the cost of repairs. Reports of damage to cargo should distinguish damage caused by the casualty and damage resulting from efforts to save the ship and cargo; particularly in the case of fire is this significant. For example, damage caused by fire must be distinguished from damage caused by water used to extinguish the fire.

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(4) All evidence concerning unseaworthiness of the vessel, failure of due diligence to make the vessel seaworthy prior to the start of the voyage in question, failure of proper care and custody of the cargo and similar evidence which may provide a defense to a claim against the Government or data for a claim by the Government.

b. Investigation reports should be forwarded to the command that would normally process any general average and salvage claims arising out of the casualties. Copies of all reports sent to an area command should be forwarded to COMSC.

c. All requests by average adjusters, contractors, owners, or masters for information or commitments and other relating documentation should be referred to COMSC if received prior to referral of claim by COMSC to the cognizant area command for processing.

d. All claims for general average and salvage contribution arising under time and voyage charters other than salvage claims under Lloyd's Open Form will be processed by COMSC and will be settled by the cognizant Contracting Officer, COMSC.

e. All claims for general average and salvage contribution arising under shipping and container contracts and agreements and bills of lading other than salvage claims under Lloyd's Open Form will ordinarily be referred to COMSC to, and processed by, the area command which has responsibility for the payment of the operative shipping order or bill of lading. In the event cargo on board a commercial vessel has been carried under shipping orders or bills of lading from different commands, COMSC will designate the command responsible for the processing of the general average claim. Because of the close relationship of general average claims to other types of claims and particularly to cargo claims, primary responsibility for processing general average and salvage claims should be the same as that for the processing of cargo claims, stevedore damage claims and other claims.

f. Salvage claims arising under Lloyd's Open Form will ordinarily be referred by COMSC to COMSCEUR for processing.

g. Upon completion of the processing of claims for general average and salvage contribution arising from shipping and container contracts and agreements and bill of lading shipments the subordinate command will, prior to final settlement, make a complete report to COMSC of its proposed settlement and receive approval for such settlement. Upon receipt of approval, claims will be paid in accordance with the

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procedures set out in reference (a). If there are involved shipments by Government agencies other than those served by MSC, the command processing the claim will coordinate with the General Accounting Office or those agencies all such settlements to insure the assertion of a common position by the Government.

h. For claims under time and voyage charters, it will be the responsibility of COMSC to secure cargo values and copies of manifests and surveys. It will not be necessary for the investigating subordinate command to secure such values and documentation unless they become of significance in the casualty investigation. For claims under bills of lading and shipping and container contracts and agreements, the cognizant subordinate command, upon referral of the claim from COMSC, will secure from the shipper service concerned cargo values, cargo documentation and similar data.

i. Files on inactive general average claims may be closed after three years and sent to storage for permanent retention in accordance with reference (b) and subparagraph 5800(1)(B) of reference (c). If thereafter claim correspondence is received, the claim shall be reopened and administered unless barred by laches.

#### 6. General Average and Salvage Bonds, Agreements and Liens

a. No officer or employee of MSC will execute an average bond, salvage bond, arbitration agreement or nonseparation of interest agreement unless specifically authorized by COMSC. It is the official position of COMSC that there can be no lien on Government cargo and that carriers and salvors must surrender such cargo to appropriate Government agencies or representatives on demand. There is no need for carriers or salvors to attempt to exercise liens against Government cargo or to demand the execution of bonds or porting of security as a condition of the release of Government cargo since the Government's ability to pay a proper general average or salvage claim cannot be questioned. Carriers and salvors may be assured that the Government will pay such claims to the extent they are found to be proper upon examination. If such assurance will not induce carriers or salvors to release Government cargo without execution of a bond or the posting of security, the problem should be referred to COMSC for resolution.

b. There are occasions when it is to the Government's advantage to enter into an appropriate nonseparation of interest agreement with a carrier. All requests for the execution of nonseparation of interest agreements should be referred to COMSC with the advice of Counsel for the involved area command.

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c. Members of the Office of Counsel of COMSC and the area commands are authorized to attend salvage award arbitration conferences concerning salvage cases assigned to them. No other officer or employee of MSC will attend such conferences unless specifically authorized by COMSC.

"Signed"

W. C. HAMM, Jr.

Deputy

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